

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

JUN 1 9 2008 NF JUN 19, 2008 MICHAEL W. DOBBINS PLARK, U.S. DISTRICT COURSE

BankFirst, a South Dakota corporation,

Plaintiff,

Vs.

Jill L. McGuire,

Defendant.

Car

O8CV 3532

JUDGE CASTILLO

MAGISTRATE JUDGE VALDEZ

COMPLAINT

BankFirst ("Plaintiff"), as and for its Complaint herein, states and alleges as follows:

INTRODUCTION

- In 2006, Plaintiff extended a loan to Jill L. McGuire (the "Borrower") to finance the Borrower's construction of a residence on real property located in Lehigh Acres, Florida.
- 2. The Borrower defaulted under the Plaintiff's loan by: (1) failing to repay the amounts advanced under the loan to the Plaintiff on the loan's maturity date, and (2) failing to perform any construction under the project before the required completion date provided by the parties' construction loan agreement.
- 3. The Borrower has failed to cure their default. Plaintiff now brings this action seeking a money judgment against the Borrower for all amounts due under the loan.

PARTIES

- 4. Plaintiff is a South Dakota corporation with a principal place of business located at 225 South Sixth Street, Suite 2900, Minneapolis, Minnesota 55402. Plaintiff is a citizen of South Dakota and Minnesota.
- 5. Defendant Jill L. McGuire is an individual, and upon information and belief, resides at 1406 Blackburn Street, Wheaton, Illinois 60187. She is a citizen of Illinois.

JURISDICTION AND VENUE

- 6. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(a)(1), as this is an action between citizens of different States and the matter in controversy exceeds \$75,000, exclusive of interest and costs. This Court has personal jurisdiction over the Defendant because she is a citizen of Illinois, and resides in this District.
- 7. Venue is appropriate under 28 U.S.C. § 1391(a)(1) because the Defendant is a citizen of Illinois, and resides in this District.

THE BORROWER'S CONTRACT TO BUILD A RESIDENCE ON REAL PROPERTY

8. On or around December 30, 2005, the Borrower entered into a Contract for Sale and Purchase ("Purchase Agreement") with Real Estate Solutions & Investments, LLC, an Arizona limited liability company ("Seller"), to purchase certain real estate located in Florida. The real estate is located at 101 Terry Avenue North, Lehigh Acres, Florida 33971, and legally described as follows: Lot(s) 6, Block 37, Unit 7, Northeast ½ and South ½ of Section 26, Township 44 South, Range 26 East, LEHIGH ACRES, according to the plat thereof, recorded in Plat Book 15, Pages(s) 75, of the Public Records of Lee County, Florida (the "Property").

- 9. Upon information and belief, Defendant Jill McGuire's son, Michael Yamamoto, is a member of Real Estate Solutions & Investments, LLC.
- 10. Under the Purchase Agreement, the Borrower agreed to purchase, and the Seller agreed to sell, the Property for the purchase price of \$60,000.00. The terms of the Purchase Agreement provided that the sale was contingent on the Borrower obtaining approval of a mortgage loan to finance the purchase price.
- 11. On or around December 30, 2005, the Borrower entered into a contract ("Builder Agreement") with Richard Leli Homes, Inc. d/b/a RL Homes, a Florida corporation ("Builder"). Under the terms of the Builder Agreement, the Builder agreed to construct a residence on the real property at a cost to the Borrower of \$238,500.00. Under Paragraph 2 of the Builder Agreement, the Builder agreed to use its best efforts to substantially complete the construction of the residence within 270 days from the date of commencement of construction.
- 12. On approximately May 26, 2006, the Borrowers acquired the Property from the Seller by Warranty Deed.

THE PLAINTIFF'S LOAN TRANSACTION WITH THE BORROWER

The Construction Loan Agreement

13. The Borrower executed a construction loan agreement dated March 13, 2006 with the Plaintiff ("Loan Agreement"). Under the terms of the Loan Agreement, Plaintiff agreed to make periodic loan advances to the Borrower up to the total principal amount of \$299,700.00 (the "Loan"), subject to the terms and conditions of the Loan Agreement. In exchange for the Loan, the Borrower agreed, among other things: (i) to timely repay all

amounts due under the Loan, and (ii) to construct a one-to-four family dwelling on the Property (the "Project"). Repayment of the Loan was secured by a first-priority mortgage against the Property. A true and correct copy of the Loan Agreement is attached to this Complaint as Exhibit A.

- 14. Paragraph 1 of the Loan Agreement provided that all construction under the Project would be fully complete by a completion date of June 1, 2007 (the "Completion Date"). Further, under Paragraph 13 of the Loan Agreement, the Borrower agreed to cause the Project's development and construction to be done diligently, continuously, and on-time.
- 15. Under Paragraph 12 of the Loan Agreement, the Borrower agreed that the Project's budget submitted to Plaintiff "accurately and completely reflects all costs which [Borrower] reasonably expect[s] to incur in the acquisition, development, construction, equipping and furnishing of the Property and the Project." The Borrower further agreed that she "will prevent the Project's actual cost from exceeding the Project's budgeted cost."
- 16. Under Paragraph 14 of the Loan Agreement, any of the following, among others, constitutes a default under the Loan Agreement:
 - (a) The Borrower's failure to make any payments due under the Loan;
 - (b) The Borrower's failure to perform any condition or keep any promise or covenant contained in the Loan Agreement;
 - (c) A default occurs under any other agreement the Borrower has with Plaintiff;
 - (d) A default under any other term of any other loan document the Borrower has with Plaintiff;
 - (e) The Project's general contractor becomes insolvent; or
 - (f) Construction for the Project is delayed or discontinued for 10 or more continuous days so that construction may not be completed on or before the Completion Date.

- 17. Upon the occurrence of a default under the Loan Agreement, Paragraph 15 of the Loan Agreement allows Plaintiff to accelerate the loan so that all amounts advanced under the Loan are immediately due and owing. In addition, upon a default, the Loan Agreement provides that Plaintiff may terminate the Borrower's right to obtain advances under the Loan and may refuse to make further extensions of credit.
- 18. Paragraph 15 of the Loan Agreement provides that, upon a default, Plaintiff may advance funds to complete the Project in its sole discretion. Paragraph 15 further provides that, upon a default, Plaintiff may discontinue completing the Project at any time without liability.
- 19. Under Paragraph 16 of the Loan Agreement, upon Borrower's default, Borrower agreed to pay all expenses of Plaintiff's collection, enforcement, or protection of its rights and remedies under the Loan Agreement, including but not limited to, attorneys' fees, court costs and other legal expenses. Pursuant to Paragraph 16 of the Loan Agreement, these expenses will bear interest from the date of payment until paid in full.

The Promissory Note

- 20. The Borrower executed and delivered to Plaintiff a promissory note dated May 26, 2006, in the original principal amount of \$299,700.00 ("Note"). A true and correct copy of the Note is attached to this Complaint as Exhibit B.
- 21. Under the terms of the Note, Borrower unconditionally promised to repay to Plaintiff all amounts advanced under the Loan, plus interest from the date of disbursement. Pursuant to the Note, the Borrower promised to make monthly installment payments of interest under the Loan beginning July 1, 2006, and to pay the entire amount of principal due

under the Loan and all unpaid accrued interest by no later than June 1, 2007 (the "Maturity Date").

- 22. Pursuant to paragraph 3(A) of the Note, Plaintiff is entitled to an increased interest rate following maturity of the Note.
- 23. Pursuant to paragraph 5(A) of the Note, Plaintiff is entitled to a five percent late charge if any payment is more than fifteen days late.
- 24. Paragraph 11 of the Note identifies each of the following, among other events, as a default under the Note: (A) Borrower's failure to make a payment in full when due; (B) Borrower's failure to perform any condition or to keep any promise or covenant of the Note; and (C) a default on any other term of any other loan document the Borrower has with Plaintiff.
- 25. Paragraph 14 of the Note allows Plaintiff, upon default, to accelerate the loan and use any and all remedies available under state or federal law or in any instrument securing the Note.
- 26. Under paragraph 15 of the Note, upon Borrower's default Borrower shall pay all expenses of Plaintiff's collection, enforcement, or protection of Plaintiff's rights and remedies, including but not limited to, attorneys' fees, court costs and other legal expenses. Pursuant to paragraph 15 of the Note, these expenses will bear interest from the date of payment until paid in full.

THE PLAINTIFF'S LOAN ADVANCES TO THE BORROWER AND THE BUILDER'S INSOLVENCY

27. On and after the closing date for the Loan, the Plaintiff made several advances to the Borrower as provided by the Note and the Loan Agreement. During the term of the

6

Loan, Plaintiff advanced a total of \$125,163.57 to the Borrower, which financed, among other things, the Borrower's acquisition of the Property and also interest and other payments required to be paid by the Borrower under the Note and Loan Agreement.

- 28. Upon information and belief, contrary to the terms of the Builder Agreement and the Loan Agreement, the Builder did not perform any construction on the Property during the term of the Loan.
- 29. The Builder's failure to perform construction on the Property during the term of the Loan constituted a default under Paragraph 14 of the Loan Agreement and Paragraph 11 of the Note.
- 30. Upon information and belief, in approximately November 2006, the Builder became insolvent and ceased all operations relating to the Project.
- 31. The Builder's insolvency and failure to complete the Project prior to the Completion Date constituted a default under Paragraph 14 of the Loan Agreement and Paragraph 11 of the Note.
- 32. Upon information and belief, little or no improvements were ever made to the Property.

THE BORROWERS' FAILURE TO REPAY THE LOAN ON THE MATURITY DATE

33. On June 1, 2007, the Loan matured and the Borrower was required to immediately repay all amounts Plaintiff advanced to the Borrower under the Note, plus all accrued and unpaid interest.

- 34. Borrower failed and refused to pay Plaintiff all amounts due and owing under the Note. Borrower's failure and refusal to pay amounts due to Plaintiff constitutes a default under Paragraph 11 of the Note and Paragraph 14 of the Loan Agreement.
- 35. On June 12, 2007, Plaintiff sent the Borrower written notice of default. A true and correct copy of this notice is attached to this Complaint as <u>Exhibit C</u>.
- 36. On March 7, 2008, Plaintiff sent the Borrower another written notice that the Note had matured. A true and correct copy of this notice is attached to this Complaint as Exhibit D.
 - 37. The defaults have not been cured.
- 38. There is due and owing under the Note (as of March 4, 2008) principal in the amount of \$125,163.57, and accrued interest and late fees in the amount of \$11,159.83. Interest continues to accrue until the indebtedness is paid in full.
- 39. Plaintiff is incurring costs and attorneys' fees in enforcing its remedies under the Note and related loan documents.

COUNT I Breach of Contract / Judgment—the Note

- 40. Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 39.
- 41. Borrower executed the Note, promising to pay all sums due and owing as described in the Note.
 - 42. The Note is a valid enforceable contract.
 - 43. The maturity date of the Note was June 1, 2007.
 - 44. Full payment of the Note was due on the maturity date.

- 45. Borrower has failed to pay the Note in full.
- 46. Failure to pay the Note when due is a default of the Note.
- 47. Borrower has breached the terms of a valid enforceable contract.
- 48. Borrower agreed to pay all costs of collection, including reasonable attorneys' fees, in enforcing the Note. Plaintiff has incurred, and continues to incur, these costs.
- 49. There is due and owing under the Note (as of March 4, 2008) principal in the amount of \$125,163.57, and accrued interest and late fees in the amount of \$11,159.83. Interest continues to accrue until the indebtedness is paid in full.
- 50. Plaintiff is entitled to judgment against Borrower for the full amount due and owing under the Note, plus attorneys' fees and costs.

COUNT II Unjust Enrichment/Restitution

- 51. Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 50.
- 52. Pursuant to the Note, Plaintiff provided the Borrower with a benefit in the form of a substantial amount of funds.
- 53. The benefit provided to the Borrower has been to the determinant of Plaintiff as the Borrower has not repaid Plaintiff for the funds provided to Borrower.
- 54. The retention of the benefit by the Borrower violates the principals of justice, equity, and good conscience.
- 55. Borrower has profited and been unjustly enriched by receiving the benefit of the funds without repaying Plaintiff as promised. It would be unfair and inequitable to allow Borrower to retain said benefit.

56. Plaintiff is entitled to be compensated for the loss it has incurred as a result of providing funds to the Borrower and the Borrower's failure to repay the funds as promised.

COUNT III Money Had and Received

- 57. Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 56.
- 58. Plaintiff provided substantial funds to the Borrower which belongs to the Plaintiff.
 - 59. The Borrower promised to repay the Plaintiff for the funds provided to the Borrowers.
 - 60. In equity and good conscience, the funds belong to Plaintiff.
 - 61. Plaintiff is entitled to have the funds returned to Plaintiff.

COUNT IV Ouantum Meruit

- 62. Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 61.
- 63. Under the express terms of a contract, Plaintiff provided substantial funds to the Borrower.
- 64. The funds provided were intended to, and did, provide the Borrower with a direct benefit.
- 65. Both Borrower and Plaintiff had an expectation that the Borrower would repay Plaintiff the funds provided to Borrower.

CONCLUSION

WHEREFORE, based on the foregoing, Plaintiff prays for judgment as follows:

- 1. Determining that the Note is a valid instrument enforceable in accordance with its terms.
- 2. For a judgment against Jill L. McGuire, in excess of \$136,323.40, plus all of Plaintiff's costs and reasonable attorneys' fees.

3. For such other and further relief as the Court deems just and equitable.

Dated: June 19, 2008

Thomas R. Weiler, #06184955 NORTON, MANCINI & WEILER

111 W. Washington Street, Suite 835

Chicago, IL 60602

Telephone: 312.807.4999
Facsimile: 312.807.4998
tweiler@nortonmancini.com

LOCAL COUNSEL FOR PLAINTIFF BANKFIRST

David E. Runck, #0289954 Jeffrey A. Scott, #0339416

FAFINSKI MARK & JOHNSON, P.A.

Flagship Corporate Center

775 Prairie Center Drive, Suite 400

Eden Prairie, Minnesota 55344

Telephone: 952.995.9500

Facsimile: 952.995.9577

David Runck@fmjlaw.com

Jeffrey.Scott@fmjlaw.com

ATTORNEYS FOR PLAINTIFF BANKFIRST

Exhibit A

LOAN WAME	ACCT, NUMBER	AGREEMENT DATE	D.J.A.) Tilefi
All L McGuire		05/26/08	₽C1
INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
Wall Street Journal Prima pive 1.000%	9,000%	08/01/07	Consumer
	Jill I. MoGuire INDEX (w/Margin) Wall Street Journal Prime	Jill L MoGuire RATE Wall Street Journal Prime \$,000%	Jill L MoGuire 05/26/05 MNDEX (w//Margin) RATE MATURITY DATE Wall Street Journal Prime 9.000% 08/01/07

CONSTRUCTION LOAN AGREEMENT

Continuer Construction Lase

DATE AND PARTIES. The date of this Construction Loan Agreement (Agreement) is May 26, 2008. The parties and their addresses are:

CONSTRUCTION LENDERS

BANKFIRST

9865 West 78th Street Suite 170 Eden Prairie, Minnesots 155344

Case 1:08-cv-03532

BORROWER:

ALL L MCGMAE 1406 Blackburn Street Wheaton, Mno/+ 60167

CWNER

JILL, L. MCGURE 1408 Blackburn Street Wheaton, liftrois 60187

- 1. DEFINITIONS. At references to dater amounts rater to amounts in lewful money of the United States of America. Far the purposes of this Agraement, the following words will be defined as indicated.
 - A. Agreement. This Agreement is this Construction. Loan Agreement and any attached exhibits and subschiles, and their smendments.
 - 9. Completion Date. The Project's development and construction and the installation of eli fixtures and equipment specified under the Plane and Specifications will be fully completed on the Completion Date of June 1, 2007.
 - C. Construction Contract. The Construction Contract includes all contracts between me and the Project's general contractor, and any subcommentors, labories, moterial suppliers and others contributing work, equipment or metalials to the Project.
 - D. Construction Liens. Construction Lions include any notices or claims created by statutes for the purpose of securing priority of payment of the price or value of labor or work performed and installats supplied in the Project's development, construction and equippling and that attaches to the Property and the Project, or any notices or claims to withhold funds related to the Loan. Construction Liens include without limitation mechanic's Bana, materialmen liens, construction liens and all similar statutory liens.
 - E. Construistion Title Insurance Policy. The Construction Title Insurance Policy is the ALTA Extended Coverage Loan Policy form, revised to the most recent date, and any endorsements that you require.
 - F. Dispursement Schedule. The Dispursement Schedule provides a schedule of the amounts and the dates for each Loan advance, subject to this Agreement's terms and conditions. The Dispursement Schedule is incorporated by reference into this Agreement.
 - G. Improvements. Improvements include all existing physical development of the Property, all buildings or other structures on the Property and all of the Project's future improvements and construction, except for any demolition as specified in the Plans and Specifications.
 - H. Leen. The Lean refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction. Under the Lean, Butrower may obtain advances from you up to the total principal amount of \$299,700.00, subject to this Agreement's conditions and terms.
 -). Loan Documents. Loan Documents rates to all the documents executed as a part of or in connection with the Loan.
 - J. Press and Specifications. The Pisns and Specifications include the Project's plant, specifications and drawings, with the certifications, any studies, dets, working or shop drawings, any models, any contracts or agreements, and any changes and additions made concerning these plans, specifications, models and drawings.
 - K. Project. As ast torth in the Plane and Specifications, the Project includes the Iritial construction of a one-to-four family dwalling, all turure physical development of the Property and offsite Improvements, but does not include any planned demailtion.
 - Promissory Mote. The Promissory Note includes any note of notes of other written and executed evidence of the borrower's and opsignar's promise to pay you for debts, Nabilities and obligations that are extended under the Loan and any riders, extensions, renewale, modifications, substitutions and emendments thereto.
 - M. Froncers. "!" "me" and "my" refers to Corrower and every person, individually or together, who eight the Fromissory Note, subdancing my promise to pay you for credit extended subject to this Agreement, any riders, extensions, renewels, emendments and

JII L Maduja Bouth Debate Canadouston Lean Agraement 90/4X/X/den=00937100006187022062306Y

*1886 Bankera Bystams, Ind., 24, Cloud, IAN EXCENT



impdifications, and to Owner and every person, individually or together, who owns the Property on which the Project's development, ophatruotion and equipping will occur. "You" and "your" refers to the construction and equipping will occur. "You" and "your" refers to the construction lander.

N. Property. Property Includes all of the real property on which this Project will occur. The Property is located in Lee County at 101 Terry Avenue Morth, Lehigh Aores, Florida 33871, and is legally described as:

See attached Exhibit A

Case 1:08-cv-03532

- O. Recurity Agreement. The Security Agreement includes any agreement which disease or provides for an interest in personal property or fixtures which is used to secure payment or performance of an obligation owed to you.
- P. Repurity instrument. The Security Instrument includes a mortgage, deed of trust, deed to secure debt or other similar instrument that transfers an interest in real estate for the purpose of espuring repayment and performance of the Loan.
- Q. Title Insurance Company. Under the Loan, Safe Horbor Yitle will serve as the Title Insurance Company.
- 2. OBLIGATORY LOAN ADVANCES. In consideration of my agreement to constitute and complete the improvements described berein, you are obligated to open the Loan and to disburge advances up to the total principal amount of \$239,700.00, to long as I have compiled with all conditions precadent required for each advance.
- 3. TITLE. Owner has or will acquire a good and marketable too simple ownership interest in the Property.
- 4. TEAM. This Agreement will remain effective until I fully perform all of the Loan's debts, Rebilities and obligations and you end this Agreement in writing.
- 5. ARCHITECTS AND GENERAL CONTRACTOR. The Project's erchitects and professional engineers exclude your goneuting erchitect. You will choose your consulting sychilect, an independent architect, prolessional angineer or other construction occautent to periodically inspect the Project's progress and quality to protect your interests exclusively.
- 6. SECURITY, I hereby transfer, easign and grant to you all of my right, title and interest in and to all of the following property as security for the Loan:
 - A. Utility Deposits. All amounts deposited with any public or private utility for utilities tratalisation or service on or for the Property.
 - B. Flagures. All construction materials, mechinery and appliances acquired with Loss reserves or proceeds.
 - C. Plans and Specifications. The Project's Plans and Specifications.
 - D. Account. Any deposit account created under this Agreement and on any amounts pleased in such account.
 - E. Construction Contract. The Construction Contract and the General Contractor's Consent and Adaptivedoment. The General Contractor's Consent and Adaptivedoment includes the Project general contractor's consent to and adaptivedoment of the terms and contractor a content and Authorized results and replace general contractor a content to any asknowledgment of the terms and conditions of this Agreement; representations about the Constitution Contract, the Plane and Specifications, and the Project's budget; the general contractor's agreement to continue to perform general contractor's Constitution Contract with you after my default; subordination to you of all claims, tiers and encumbrances that general contractor has or will acquire in the Property; and agreement to other serms.
 - F. Architect's Contract. The contract with the Project's architect and professional angineers and the Architect's Contract Advanced and professional angineers and advanced and acknowledgment of the terms and conditions of this Agreement; representations about the Architect's contract, the Plans and Specifications, and the Project's budget; subordination to you of all disting. lies and should transact that Architect has or will acquire in the Property; the Architect's agreement to continue to perform its Architect's contract with you after my default; and agreement to other terms.
 - G. Other Agreements. Any other agreement which, in your sole judgment, would easist you in completing the Project about I be in default under the I net.
 - H. Other Colleges. To the extent possible under state law in any and all government licenses, permits and approvals necessary for the Project. In addition, any and all other polisteral described in any other been Document.
- 7. CONDITIONS PRECEDENT TO FIRST LOAN DISBURSEMENT. You will open the Loan and disbursa or at your option, the Title Insurance Company disbursts, the Loan's first advance only after I comply with all of the following conditions on or before May 28, 2008.
 - A. Dither Loan Documents, I will execute the other Loan Documents and provide you with all other documents, information and waterniss that you request. I will provide these in a form, a substance and with an execution acceptable to you,
 - B. Recard Security instrument. | will not parmit any work or any materials to be furnished for the Project until you properly parted as otherwise make effective as to third parties any security interests, sesignments or other consensual liens or encumbrer
 - C. Title insurance, I will have furnished to you e title insurance commitment, interim binder or a Construction Title insurance Policy. acceptable to you, from the Title Insurance Company. I will also furnish any title insurance statements and other institution or documents required by Title Insurance Company for the issuance of the title Insurance commitments, Intellin binders, and Construction Title Insurance Polloy.
 - D. Builder's files and Curuetty insurance. I will obtain builder's risk insurance, with a coverage, a form and an emount acceptable to you and as required by the Construction Contract, traving the improvements under construction against loss or demage by fire or other casualty, I will also provide flood insurance and earthquake insurance when required by you or by applicable law.
 - E. fermits: Compliance with Laws. I will furnish copies of all completed governments building permits, approvale, consents and other feeness required for the Project's construction under the Plants and Specifications, including any offsite improvements. At your request, these applies will be certified. I also will have furnished evidence that the Project's Plants and Specifications will half comply with all zoning and building code laws, anytromyental taws and any other coverances and restrictions.
 - F. Assignment of Contrasts. 1 will provide you with the Architect's Consent and Astrowisegment and the General Contractor's Consent and Astrowisegment.

- G, Liability Insurance. I will furnish commission from the Project's general contractor and subcommentors that evidence workers' sompensation and lightity insurance, including contractual liability, for the course of Project's development, construction, and equipment and that names you as additional insured. On your request, I will obtain general public liability insurance naming you as an additional insured and in an amount acceptable to you. My general public liability insurance palicy will contain a standard non-contribution mortgages's loss payable endossement for you.
- H. Surety Bonds. At your request, I will have turbished from a surety licensed to do business in the state where the Property is located. H. Substy Bonds. All your paquest, I win have turnised from a surary located to do delete in the state where in the state where in repeated to you, and that names you and it as joint and several obligace, performance bonds for all contractors, labor and material payment bonds, and a completion bond. I will also strange to have the performance and payment bonds name the Project's general contractor as the principal and you as the obligae or ad-beneficiary. Each bond will be the amount of the contract or material will strange for phase bonds to be executed by the same surety, unless you parmy lotterwise in writing. The bonds and any notice of commencement of construction will be duly recorded, when required by law, in the real property records of the county, district or parish where the Property is located.
- 1. Project Budget. I will obtain your approval of the Project's budget, detailing all of the costs for any acquisition, development, construction, equipping and furnishing of the Property.
- J. Plane And Epselfications. 1 will furnish a complete copy of Plans and Specifications that eat forth all of the Project's Improvements.
- K. Additional Requirements. I will furnish any additional documents and evidence that you require.
- L. Agreement Termination. You may and this Agreement on May 26, 2006 if I have not performed at of the conditions precident to the first discursement of Loan reserves and proceeds and begun construction of the Project on or before this date.
- B. CONDITIONS PRECEDENT TO ALL LOAN DISBURSEMENTS. The following conditions will be complied with before you disburse, or at your option, the Title Insurance Company diaburees, any Loan reserves and proceeds.
 - A. Construction Escrew Agreement, At your request, you and I will enter into a construction escrew agreement with the Title Insurance Company directing the Title Insurance Company, rether tion you, to make Loan disbursements after it satisfy this Agreement's disbursement conditions to its satisfaction. The Title Insurance Company will determine the form of the escrew agreement. I will comply with the escrew agreement's terms and conditions to the extent they do not contradict this Agreement. I agree to pay the fees, one is and expenses that Title Insurance Company charges for its services under the construction excrew agreement.
 - Payments. I will make timely payments of any amounts due and payable under the Loan.
 - C. Survey. At your request, I will furnish you with a survey plet of the Property of leasent date, prepared and certified by a licensed or prepared by a licensed professional angineer and cartifled by a licensed surveyor.
 - D. Inspection. At your sole discretion, you, your consulting architect or your spent will have inspected the project and have found that the project at that time reflects pood quality work and materials, compiles with the plan and specification and completes that construction stage. You are under no obligation to supervise, inspect or inform me of the progress of construction, and I will not rely upon you therefor. You will incur no liability or obligation to me arising out of such inspection. All your inspections and approvals are solely for your swin benefit and may not be relied upon by any third party.
 - E. No Default Osslared. I have not received written notice from you that a default under this Agreement or any of the Loan Documents
 - F. No Walver. Your acquissoence to my failure to comply with any condition of any Loan disbursement does not waive my need to comply with this condition at any time after your acquisecence.
 - d. Documents Fernished. Cefore each disbursement of the Loan reserves and proceeds,) will furnish or owner to be furnished to you (or the Title insurance Company when they are making the disbursoments) the following documents.
 - (1) Application For Disbursement. I will provide you with a properly executed standard American Institute of Architect's payment request form for enother form you approve) and any supporting evidence that you require before disbursing Loan reserves and proceeds. I will only apply for a disbursement for work screekly done and materials actually incorporated in the Project. My requests are my certification that all of the request's contents are true, complete and correct se of the request's date.
 - (2) Certification. At your request, I will have furnished to you a certification by the Project's architect or enother qualified inspector acceptable to you that the Project's development, construction and equipping has complied and will continue to comply with all applicable laws
 - (3) Varification Of Contracts. At your request, I will provide you a sworn statement as to the contract amounts due to the Project's architect, professional angineers, contractors and material suppliers for all of their work and labor performed, equipment and materials supplied to a reasonably current and apsolfied date. You may require each listed person's verification before making any disbursements. If my list of all contracts that I have made for the Project has changed, that I will provide you with written statement advising you of the changes, I will provide you with a written statement advising you that no changes have occurred, when my list of elf contracts has not changed.
 - (4) Lien Welvers and Bubordinations. I will supply you with waivers or releases of Construction Liens as well as lien subordinations or disclaimers from Project fixture and equipment suppliess that satisfy your requirements and applicable law. I will also supply you with any supporting data that you request from those benefiting from the disbursement.
 - (5) Distursement Requirements. I will furnish any other documentation that is requisited by whomever is administering the
 - (a) Title Insurance Occumentation. I will furnish other decumentation that the Title Insurance Company requires when it is administering the disburseMents.
- 8. CONDITIONS PRECEDENT TO THE FINAL LOAN DISBURSEMENT, You or at your option, the Title insurance Company, will make the final disbursement of the Loan reserves and proceeds, after I furnish or cause to be furnished the following to your estate often.
 - A. Certifications and Lien Walvers. After fully completing and equipping the Project, I will supply you with swom statements, certifications and final unconditional waivers or releases of Construction Liens from the Project's general contractor, subcontractors and meterial



Case 1:08-cv-03532

- 6. Cartificate of Occupancy or Completion. I will provide you with a copy of the cartificate of occupancy, completion or other estisfactory written confirmation that the Project is domplete and any stuctures are ready for occupancy. You will also receive satisfactory evidence that all utilities are evaluable at the improvements and all connection fees are paid.
- C. This insurance, I will provide you with the Title insurance Company's fine) andorsement to the Construction Title insurance Policy as you require at your sole discretion, and a Construction This insurance Policy will be issued for the face amount of the Promissory Note, free of all exceptions and objections.
- O. Property incurence Policy. I will provide you with evidence that an incurente policy has been obtained for the Property and its improvements that provides fire and extended occurage for replacement cost of the improvements, with a Lender's loss payable
- d. Taxes and Insurance, I will have made all tax and insurance deposits. If any, required by the Security Instrument.
- F. As-Sully Plane and Epspi Seations. I will fulfilled you a full and complete certified eat of "as built" Plane and Specifications.
- O. All Other Requirements. I will comply with all other requirements of this Agreement.
- 10. RESERVES AND DEPOSITS. You may set saids and reserve Loan proceeds for Loan Interest, fees and expenses, taxes and insurance. I agree that you may set saids a reserve in the sum of \$12,000.00 for interest to be paid on the Loan.
 - A. Reserves. No interest will accoun on any reserve Loan proceeds. Disturgement of reserves is disturgement of the Loan's proceeds. You will disturge the reserves for the purpose they were set used for, as long as I am not in default under this Agreement and the undistursed Loan reserves and proceeds cover or exceed your estimated does for completing the Project. You may directly pay these reserved items, reimburse his for payments I made, or reduce the reserves and increase the Loan proceeds available for disturgement.
 - 8. Deposits. You may see require me to deposit with you amounts needed to finish the Project, including any installation of any required lithures and equipment, when the Loan's undisbursed proceeds and reserves are less than your estimated cost for completing the Project. You make these satiryates solely to protect your interests. You will provide me with a written request for a deposit with supporting documentation of your estimate, which is final and conclusive, and i will deposit this delicionary as econ as you request. You may apply the amounts that I deposit with you to cure any default or to reimbures yourself for payments that you made on my bahalf.
 - C. Appount. You may establish a non-interest beering account for any resorved Loan proceeds and amounts I am required to deposit with
- 11. DIBBURGING LOAN PROCEEDS. Disbursement of Loan reserves and processes will be subject to the following terms and conditions.
 - A. Disburgement Schedule. You will disburge the Loan /eserves and proceeds to yourself for reimbursements of fees, costs and expethat you advance for me and to me as indicated in the Disbursomern Schedule and subject to the conditions presentent under this Agreement.
 - 8. Payments. You may make advances payable to me or fointly to me and Project's general contractor, the subcomtactors of the metarial my default. Any disbutsement may be deposited into an account established by me or enother payes entitled to payment under the Construction Contract. You may also pay yourself for amounts I owe you or you pay others, I will receive and hold advances meds payable to me in trust to be applied first to paying the cost of improvements before any other purpose.
 - C. Fees and Expenses. I will pay all fees, costs and expenses rejeting to the Louri's closing before or at the time of the first disbursement of Loan reserves and proceeds or at another time that you specify. I may pay these fees and expenses in each by a deshiers check or request that the amount due for these fees and expenses by distrated to you from the Loan's proceeds. Any fees, costs and expenses that you advance or indus on my behalf become a part of the Loan's debt and secured by the Property, even when these amounts and the Loan debursements exceed the face emount of the Hote.
 - D. Your Right to Advance Funds. You may (but are not required to) advance amounts to ours any default and these advances will become a part of the Loan's debt and secured by the Property, even when these amounts and the Loan disbursements exceed the face amount of
- 12. WARRANTIES AND REPRESENTATIONS. I have the right and sutbority to enter into this Agreement. The execution and delivery of this Agreement will not violete any agreement governing me or to which I am a party. I make to you the following additional warranties and representations which will continue as long as this Agreement is in effect.
 - A. Ownership or Lease at Property. I have the power and authority to own, develop, construct and equip the Property.
 - B. Walldry. The execution and performance of this Agreement and other uses Coopments is not and will not cause a default under any other agreement binding or affecting me, or a violation of any law or court order that may affect the Property of the Property's planned usage. I represent and warrant that the copy of the Project architect's contract and the Construction Contract that I provide you are true, correct and complete copies and that they are not subject to any cisim, satoff or ensumbrance.
 - Q. Legal Assurances. I am not in violation of any law or any order from a court or any other type of governmental unit that may affect my ability to perform this Agreement or that may affect the validity of priority of your lien on the Property.
 - No lawsuits or other proceedings are pending or threetened against me, the Project's general contractor or the Property that may adversely affect your lies on the Property, my stality to perform this Agreement of the Construction Contracts or any leases required under the Loan, except those already disclosed to and administrated by you in writing.
 - D. Accuracy of information. All financial statements, other information or cartifications furnished by me to you are true, complete and portroit as of the date made, and do not misstate or unit any fact necessary to evoid being misseading.
 - E. Project Budget. The Project's budget that I submitted to you accurately and completely reflects all costs which I reasonably expect to know in the sequisition, development, construction, equipping and furnishing of the Project and the Project. I will prevent the Project's actual cost from exceeding the Project's budgeted cost,

South Dakers Construction Loan Agreement BD/4XXX-lan=CCD37100005167022062306Y

*1886 Barkers Systems, Inc., St. Cloud, MN External



F. Emilionmental Representations, Warranties and Agreements.) represent, warrant and agree that:

- (1) Except as previously disclosed and adknowledged in writing to you, no hazardetts substance has been, is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of hezerdous substances that are personally recognized to be appropriets for the normal use and maintenance of the Proporty.
- (2) Except as previously disclosed and ecknowledged in writing to you, I and every tenant have been, are, and will remain in full completes with any applicable anytonmental law.
- (3) I shall immediately notify you if a release or threatened release of a hezardous substance occurs on, under or about the Property or there is a violation of any environmental law concerning the Property. In such an event, I shall take all necessary remediat applot in accordance with any environmental law.
- (4) I shall immediately notify you in writing as egon as I have resear to believe there is any pending of threatened investigation, claim or proceeding relating to the reliese or threatened (elease of any hazardous substance or the violation of any applicaments) law,
- 13. AGREEMENTS. Until the Loan and as related debte, flabilities and obligations are paid and discharged, I will comply with the following terms, unless you waive compliance in writing.
 - A. Contractors and Suppliers. I will ensure that the Project uses contractors, subcontractors and material suppliers that you repart as finencially sound and qualified.
 - B. Material Suppliers' Lienz. I will seek your prior approval before permitting the pulphase and installation of any flutures of personal property on the Property, when the meterial suppliers reserve title, the right to remove or reposesse, or the right to consider such items as personal property efter these are incorporated into the improvements.
 - C. Construction Liene. I will not permit any Construction Lien relating to the Project to be filed, recorded or asserted against the Property, any appurtenent interest or right, any account created under this Agreement or say funds due to the Project's general contractor. Within 10 days after any Construction Liene are filed, recorded or asserted, I will diligently dispute their validity or grampity presure their decharge or release by providing security or indemnity sufficient to after release the Construction Lien or obtain title incurrence heuring against at Construction Liens; you may set on my benefit in this manner when I had to do so. You need not inquire into the validity or amount of these Construction Liens, I will pay at of your costs, expenses and responsible attorney's fees for obtaining the discharge or release of these Construction Liens. I will pay at of your costs, expenses and responsible attorney's fees for obtaining the discharge or release of these Construction Liens. You may opt to recover these forms on demand from me, from any secount created under this Agreement, or treat your payment as an educace and disbutesment. under the Promissory Mate.
 - D. Indepently. I will defend, indemnity and hold harmless you, your agents, successors and assigns for snything that anyone, other than you or your agents, do or feë to do under or about the Property. I will defend you against all claims, demand, cleanup response and remediation requirements that result from these actions or emissions. This includes without limitation losses, punitive and componentary damages, expenses, costs and actorneys' fees, and liability resulting from a finding that you, your signife, successors and essigns and is see angaped in a joint venture or partnership. My duty continues after the Loan's dable, liabilities and obligations are paid and discharged until your interest in the Property has ended.
 - E. No Third Party Beneficiery Rights. You and I do not intend to create any third-party beneficiery rights under this Agreement. No one other then me will have any right to obtain or compet a disbursament of the Lean's reserves of process
 - F. Right to Assign. I will not assign or attempt to assign my rights under this Agreement. An attempted assignment in violation of this agreement will not vest any rights in the purported assigns. You may easign, negatiate, pledge or transfer the Promissory Note, the Security Instrument and other Loan Documents to snyone to secure a Loan from them to you.
 - G. Inspection. I will help you or your consulting architect or other representatives to enter onto the Property and inspect the quality and progress of the Project's performance, labor and materials. I will promptly comply with your requirements to remove any dissettinfaction about the Project's quality or progress.
 - M. Publishy. I agree that you may display a sign at the constauction sits informing the public that you are the construction lander for the
 - 1. Construction. 1 will cause the Project's development, construction and equipping and any offsite development to be done diligently, continuously, on time, with high quality labor and materials and strictly by the Plans and Specifications.
 - J. Change Orders. The Plane and Specifications will not be materially changed until you give written approval of each material change.
 - K. Pees and Expenses. I will pay sit sessonable and bone tide pre-closing, aloning and post-closing less, coats and expenses incurred by you incidental to this Loan.
 - L. Lander's Actions Only for Lander's Protection. I agree that you and your consulting architect are not obligated to inspect, supervise, prevent Construction Liens, or inform me about the Project's progress or performance. You and your constituing architect act for your protection when inspecting the Project, propuring awarn statements and welvers of liens, approving change orders and similar actions. You will mour no liability or obligation to me scising out of such sepaction. An inspection for or by you does not welve any default and is not a representation that I have compiled with this Agreement, any applicable fewe or that the Project is free from defective materials or
- 14. DEFAULT. I will be in default if any of the following oppure
 - A. Payments. I fell to make a payment in full when due.
 - 8. Insolvency of Bankruptcy. The Seath, dissolution of insolvency of, appointment of a resolven by or on behalf of, application of any debter relief law, the emigrament for the benefit of engines by or on behalf of, the voluntary or involuntary termination of extrange by, or the commandement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition of debtor railed law by or egainst me or any oc-algeer, endozer, accept or guarantor of this Agraement or any other obligations I have with
 - C. Death or incompetency. I die or am declared legally incompetent.
 - D. Fellure to Parliams. I fall to perform any condition or to keep any promise or doverant of this Agreement.

er i gyznat i ve gruer gereensk komunik i god flywer

- E. Other Documente. A default occurs under the terms of any other Loan Document.
- F. Other Agreements. I win in default on any other debt or agreement I have with you.
- Q. Migrapresentation. I make any variety is written statement or provide any financial information that is unitue, insocurate, or conceals a meterial fact at the time it is made or provided.
- H. Jadgment. I felt to settery or appeal any judgment against mo.
- 6. Forfeiture. The Property is used in a manner or for a purpose that threatens configuration by a legal outhority.
- J. Name Change. I change my name or sesume an additional name without notifying you before making such a change.
- K. Property Transfer. I transfer all or a substantial part of my money or property.
- L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.
- M. Ispeculty. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Agreement or that the prospect for payment or performance of the Loan is impaired for any reason.
- M. Deposits. I fell to premptly deposit any amounts that you require me to deposit with you.
- O. Contractor's hashwardy. Any Project general contractor or subcontractor becames inspirent, either because its flabilities exceed its assets or the Project's general contractor or subcontractor is unable to pay its dabte as they become due, and I fall to produce a contract with a new contractor or subcontractor, responsibly selfatectory to you, within 30 days from the occurrance of this insolveney.
- P. Cammitment. Any governmental agancy or another lender, committed to insuring the obligation secured by the deculity instrument or making an interim or permanent loan, falls or refuses to insure, purchase or fund the Loan from you by the time specified in any commitment, and I then fall to promptly pay to you all sume advanced by you under this Agreement.
- Q. Engroschment. Any encroschment to the Property of to other property cycults from the existence or construction of the Improvements when this engrephment is not removed or corrected within 90 days.
- It. Unsadefactory Construction. You or your consulting architect determine that any construction work is not constructed addording to the Pjans and Specifications or the Construction Congress, communicate this failure to me, and I do not obtain correction of the unsatufactory construction to the satisfaction of you and your consulting architect within 30 days after hatilization of this disapprove).
- 8. Interreption of Construction. Construction on the Improvements is delayed or discontinued for the shortest period provided under any performence or payment bonds or otherwise. To or more continues days, as your consulting architect in its sole discretion contained the construction may not be completed on or before the Completion pate. The purishable delays for certain events may be increased from 10 to 58 contractions days for a single continuous period or 30 total non-continuous days are shorter periods required by the payment or performance bonds. These certain swants permitting delay or discontinuable include: tirs, sentinquists, or other acts of God, acts of the public enemy, riod, insultantion, governmental trapilation of the sale of material and supplies or the transportation thereof, or strikes disorder affecting the work of construction, or shortages of interfals or labor resulting directly from governmental controls of diversions.
- 15. REMEDIES. After I default, and after you give any legally required notice and opportunity to dure the default, you may at your option do any one or more of the following.
 - A. Acceleration. You may make all or any part of the amount owing by the terms of this Agreement Immediately due.
 - B, Bources. You may use any and all remadish you have under state or federal law or in any Loan Document.
 - C. Tarmination. You may terminate my right to obtain advances and may refuse to make any further extensions of credit.
 - D. Attachment. You may attach or gamleh my wages of earnings.
 - E. Walver. By choosing any one of mote of these remedies you do not give up your right to use any other remedy. You do not walve a default if you choose not to use a remedy. By stanting not to use any strongly, you do not walve your right to later consider the event a default and to use any remedies if the default continues or occurs again.
 - F. Take Possession of the Property. You may take possession of the Property to the extent and in a manner not otherwise prohibited by law.
 - G. Complete Project. You may, but are not obligated to, do anything you determine is necessary or desirable to complete the Ptoject under the Plans and Specifications or as you what wise consider appropriate. You may at your sold discretion advance that to complete the Ptoject even when all of these advances exceed the Leah's maximum total principal amount. You may supermittee completing the Ptoject at any time without liability. I appoint and constitute you as my attempted that with full power and substitution is the Property to complete the Project's development, construction and equipping in my name. This power of attempt is irrevocable alone it is a power coupled with an interest.
 - H. Lender's Right to Cure. You may, but are not obligated to, edvance Loan reserves or proceeds to cure any default that may be cured by a payment of money.
 - I. Catality. If all or part of the improvements are damaged or destroyed by a casualty, I will proceed diligently to make settlement with the insurance company and cause the insurance proceeds to be deposited with you. If you decide that sufficient insurance proceeds and undiabured from reserves and proceeds exist to complete the Project on or before the Completion Date, then you may disburse any insurance proceeds I deposit with you for the Project's restoration and completion. You need not make any disbursements of the Loan reserves and proceeds until such restoration is completed to your satisfaction. If you decide that insufficient insurance proceeds and undisbursed Loan reserves and proceeds exist to complete the Project on or before the Completion Date, then you will collect, retain and apply these insurance proceeds to reduce the Loan's principal between
- 18. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all exponses of collection, enforcement or protection of your rights and remedies under this Agreement or eny other Loan Dodument. Expenses include, but are not limited to, court costs and other loads expenses we that are payable immediately. If not paid immediately, these expenses will be included the lightest interest from the data of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Promiseory Note. All fees and expenses will be secured by the Property I have

متحدثهم وزواع فاحتجاب والواجا

granted to you, If any. In addition, to the extent permitted by the United States Bankruptoy Code, I agree to pay the reseasable attorneys' fass incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

17, APPLICABLE LAW. This Agreement is governed by the laws of Bouth Dakote, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

15. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other 15. JOINT AND INCAVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay this Loan is independent or the obligation of any other person who has also agreed to pay it. You may such ma shore, or anyone also who is obligated on the Loan, of any nyther of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. You may beging all or part of your rights or dudes under this Agreement or the Loan Documents without my constant. If you seeigh this Agreement, all of my poverants, agreements, representations and wareful and the hold of this Agreement and the Loan Documents will be needed to the Loan Documents. The duties of the Loan will bind my successors and seeighs.

19. AMENDMENT, INTEGRATION AND SEVERABILITY. This Agreement may not be amended or modified by oral agreement. No amendment or modification of this Agreement is effective unless made in writing and executed by you and ms. This Agreement and the other Loan Documents are the complete and final expression of the understanding between you and ms. If any provision of this Agreement to unentorceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

20, INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Agreement.

21. NOTICE, PRANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by fave, sny notice will be given by delivering it or mailing it by first clear mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Botrower will be deemed to be notice to all Botrowers. Notice to one Owner will be deemed to be notice to all Owners. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statements for information for information and complete. I agree to along deliver, and file shy additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to certifin your lien status on any Property. Time to of the sessance.

22. HET OF EXHIBITS. The following documents, that are checked, are incorporated by reference into this Agreement:

Builder's Risk Insurance

Construction Contract

□Copy of any Lagers

☐Distauraement Schedule

MPlans and Specifications

ElProlect Budget

□Subdivision Price List

☐SuretV Bonda

Cities Insurance Policy of This Insurance Commitment or Interim Birides

□Aborrest and This Opinion

□Architem's Consent and Acknowledgment

□General Contractor's Consent and Acknowledgment

RIPromissory Note

□Security Agreement

☐Security Instrument

Differently Agreement

□Affidavit Under Section 22 of the Dert Law of the State of New York

23. ENGMATURES. By algoing under seel, I agree to the terms contained in this Agreement. I also authorizedge receipt of a copy of this Adresment

South Dekots Construction Lean Agreement BD/4XXX/seas00937100008187022052306Y

*1996 Bankers Systems, Inc., \$1, Claud, MN External

Exhibit B



Г) DAN MUMMUR	LOAN NAME	ACCY, NUMBER	NOTE DATE	MITTALE
١	90082	Jill & MeGuire		05/20/04	RC 2
ı	NOTE AMOUNT	INDEX (w/Nimphy)	RATE	MATURITY DATE	LUAN PURPOR
ļ	\$295.700.00	Wall Syant Journal Phras	1.000 W	05/01/67	Constitut
}		plus 1:000%	Creditor Use Only		

PROMISSORY NOTE

(Compumer - Cleand End)
State of Fiorida's Documentery Bramp is not required on this Note.

DATS AND PARTIES. The date of this Promissory Note thiotal is May 20, 2005. The parties and their addresses syst

LENGERE

BANGGUET SOBS West 78th Street Suite 170 Eden Freite, Mirrosote 55344 Talaphone: (952) \$23-9600

SORROWER, JILL L MCQUIRE 1408 Blookburt Street Wheaton, Whole 60187

1. DEFINITIONS. As used in this Note, the famile have the following meanings:

A. Pransume. The pronound "i," "me," and "my" refer to such Conswer signing this hate, individually and together. "You" and "You" rathe to the Lander.

4. Note relate to this distument, and any extensions, paramete, modifications and substitutions of this Note.

G. Loan. Loan refers to this transaction generally, included obligations and during stress string from the terms of all documents prepared or submitted for this transaction step as applications, security agreements, displacement or notes, and this Note.

D. Lean Deciments. Lost Documents refer to all the documents executed as a part of or in connection with the Logic

E. Property. Property is any property, real, personal or intendible, that secures my performance of the abdigations of this Luca.

F. Percent. Fixme and rate sixings timitations are expressed as encesional paraentages.

2. PROMISE TO PAY. For vitue reastred, I promise to pay you or your order, at your address, at a such other location as you may designate, the principal amount of 9289,769,00 (Principal), or so much of this emetric as may be advanced from time to time under the terms of this place breaver from the date of disbursement, on the unpeld frincipal belonce until this fight meatures or this obligation is acceptanced.

All advances made will be made subject to the terms of a segmente congruence loan agreement and all other terms and conditions of this

3. INTEREST, interest will open on the unpeid Principal belongs of this Norm at the rate of \$.000 percent flatarest Rate) until May 27, 2008, effor which time it may though an despriped in the Variable Rate subscriber.

A. Post-Apturity Interest. After maturity or exceleration, impropt will accrue on the empaid Principal belance of this Note at the variable interest fixes to effect from the or time, plus on additional 2,000 persons, shall paid in 678.

5. Majdrinum interest Agrampt. Any evigum assessed or patiented an interest under the serup of this Now Will be Amitted in the maximum learful amount of Attended his unspec of the maximum learful amount of Attended his amount of the maximum learful amount will be applied first in the unpublic interior. Any remainder will be retunded to me.

G. Statutory Authority. The amount assessed or solocoed on this Note is sushorized by the Sauth Dekonz teary have under 6.0. Codified Laws Ann. 16 14-3-13 and 64-3-14.

D. Acerusi. Imeres excluse using an Actual/365 days counting method.

E. Variable Rate. The interest flats may change during the term of this Wensection.

(1) Index. Beginning with the first Change Date, the interest Rest will be based on the following index: the base rate on emporate leave posted by at least 72% at the hatten's 30 largest basks import on the Wall Street Journal Prime Pets.

The Current index is the most means index rights available on such Change Date. You do not dustrainly by salecting ship index, or the marght, that the interest flate on this Note will be she stars say of large or any other boths or sizes of looks you make to me or other bottowers. If the index is no longer evaluable, you will submitted a similar index. You will give me notice of your whole.

(2) Change Cate. Back date on which the interest Rate may change is suited a Change Outs. The interest Rate may change May 27, 2006 and stilly thurselter.

(ii) Columbritors Of Change. On each Change Date you will columbre the inverset Sate, which will be the Current index star 1,000 person. The result of this coloration will be reunded to the necreet .01 person. Subject to any Emissions, this will be the interest

Jid L Uk Dales 3010 Dabets County Note \$01400004444006377000031870220389884

*1000 dankers Systems, Inn., Gr. Cituri. NO. Supliated

EXHIBIT R

. . . jā jargzam — tas karavaram, k

Rate wrill the held Change Date. The new interest here will second effective on each Change Date. The interest feet and atter charges on this Note will never exceed the highest sets or sharpe allowed by law for this Note.

66) Limitations. The interest Rate shanges are subject to the Inflavoling limitations:

(a) Lifetime. The interest flate will never be late than 8.000 patrent.

(B) 2019ct (If Vertails Flats. A change in the interest Rate will have the following effect on the paymetrie: The amount of scheduled payments and the amount of the that payment will change.

4. ACCITIONAL CHAMBES. As additional consideration, I agree to pay, or have paid, these additional few and sharese.

A. Marguityshide Fore and Charges. The fellowing feet are derived when expected and will not be refunded if a prepay this Note before

A. Margethydistic specific data.

Whe fine. Airl Whe fine is at \$25.00 payable from the lean proceeds.

Whe fine. Airl Whe fine is \$25.00 payable from the lean proceeds.

Underwriting fine. Airl Underwriting fine too at \$655.00 payable from the lean proceeds.

This insurance. Airl This insurance from of \$45.00 to payable from separate funds on or before today's date.

This is sumination. Airl This is sumination too of \$55.00 payable from separate funds on or before today's date.

This is sumination.

Airl The Savide fine fire of \$55.00 payable from the loan proceeds. Tide Examination. Aird Title Examination are of \$25.00 payable from separate funds on or before taday's date.

Tan Service Fee, Aird Tax Service fee fee of \$25.00 payable from the loan proceeds.

Tax Search & Update Fee. Aird Tax Search & Update fee fee of \$180.00 payable from separate funds on or before today's date.

Tax Stampe. Aird Stampe and Sarte Tex Stamps fee of \$1,046.85 payable from separate funds on or before today's date.

Betterment Fee. Aird Secarding Fee fee of \$125.00 payable from exparate funds on or before today's date.

Recording Fee. Aird Recording Fee fee of \$255.00 payable from exparate funds on or before today's date.

Presenting Fee. Aird Processing Fee fee of \$400.00 payable from exparate funds on or before today's date.

Overright Couries Fee. Aird Overright Courier Fee fee of \$125.00 payable from experate funds on or hefore today's date.

Land Origination. Aird Lean Origination fee of \$2,57.00 payable from the lean payocards.

Lander's impaction - Construction Loan. Aird Lender's Inspection - Construction Loan \$500.00 payable from the lean payocards.

- 8. REMERIAL CHARGES. In addition to interest or extur finance charges, I agree that I wis pay these additional fees being on my interest and pattern of payment. Additional remedial charges may be described examined to fine.
 - A. Late Charge. If a payment is more than 15 days late. I will be charged 5,000 parsent of the Amount of Payment. I will pay this fate charge promptly but only once for each late payment.
- S. PARICHARE MONEY LOAN. You may trained the name of the seller on the sheek or draft for file Note.
- 7. PAYMENT. I agree to pay this blots in knowlengests of sourced present beginning July 1, 2006, and then on the 1st day of mach month therester. I agree to pay the entire unpaid Principal and any account but unpaid interest on June 1, 2007. The final payment includes an arrange for interest spears and may need to be adjusted when the payment becomes due and payment.

Feynments will be rounded to the nearest \$.01. With the final payment 5 dec agree to pay any additional free or charges owing and the Ameunt of any allvaness yes have made to others on my betail. Payments saluditied to be paid on the light, \$0th or 31st day of a morell that santains no such day will, instead, be made on the last day of such manife.

Each payment i make on this flate will be applied that to any charges that I own other than principal and increas that is interest that is due, and finely to principal that is due, No hate charge will be essented up any payment when the only delinquency is due to has seen essented up and finely to principal that is due, No hate charge will be essented up any payment when the only delinquency is due to has seen essented up any payment and the payment is constructed a his payment. You may shange here payments are applied in your sole discretion without notice to me. The actual emount of my final payment will depend on my payment record.

- B, PREPAYMENT. I may prepay this Note in tull or in part at any time. Any partial prepayment will not excuse any leter echeculed payments uraji i pay la fub.
- 3. LOAN PURPOSE. The purpose of this Lann is to provide funds (of construction of a single family residence.
- 10, SECURITY. This Lean is explained by separate security trebundate prepared together with this Nets as follower

Document Name

Parties to Doministrat

Mortgage - 101 Yeavy Avenue North

11. DEPAULT. I will be in default if any of the following popur:

A. Payments. I fell to make a payment in fiell when due.

III. beginning at darknessey. The death, denotation or insolvency of, appointment of a section by as an behalf of, application of any debots relief levs, the maignment for the benefit of gradients by or on behalf of, the voluntary as involuntary termination of extension by, or

JH L. McCriss South Delate Presidency Note SQL2XXXIV == 000031000081187023063900H

91999 Bankers Bysmers, Inc., St. Cloud, Mit. #545000€



ř

the commencement of any proceeding under stry present or future federal or style brookensy, bentrupicy, reorganization, composition or debut ratial law by at against the or any an-eigner, anderser, surely or quaranter of this blade or any other abligations i have with you.

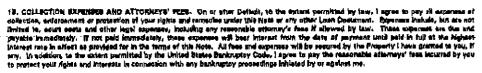
- C. Dueth or highway stancy. I die et am derlared legally broompeters.
- D. Pallins to Perform. I fall to perform any condition or to keep any promise to coverent of this Note.
- E. Other Deputations. A default occups under the terms of any other Loan Deputation.
- F. Other Agreements. Late in defeult on any other slobt or agreement I have with you.
- All propriese state. (make any vertical or written statement of provide any financial information that is unitue, integrates, or denote a systemial fact of the time it is made or provided.
- PL Judgment. I fail to actisfy at appeal any judgment against me.
- |, Partitions. The Property is used in a manner or for a purpose that threatens configuration by a logal sucherity.
- J, Name Chings. I Change my name or secume on selfitional name without notifying you lesfore melang such a change.
- E. Property Transfer.) Canada; all or a substantial part of my manay or property.
- L. Pecperty Value. You determine in good faith that the value of the Property has declared in is impaired.
- M. Inspectivy. You determine to good taids that a state/of advance change has ecounted in my threecial pendition from the conditions set forth is my most recent financial statement before the date of this those of that the proposal for payment or performance of the Loan is impaired for any reason.
- 12. DUE ON MALE OR CHCUMERANCE. You may, in your cytics, decline the crafts believed of this hard to be immediately due and psychologically declined to be immediately due and psychologically declined to the control of the control o upon the chestion of, or seement for the coastion of, any lan, snowmers, transfer or sale of all or say post of the Property. The right is subject to the restrictions beyond by federal law (12 C.F.R. 681), so applicable.
- 13. WA PYERS AND COMMENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acquirenters, notice of blant to accelerate and notice of dishoner.
 - A. Additional Walvage St. So movest. In addition, i. and any party to this Note and Lash, to the extent permitted by law, content to certain actions you may take, and generally waive defenses that may be evellable based on these actions or intend on the status of a purry to this
 - (1) You may renew or extend payments on the Note, regardless of the number of such renewate or extensions.
 - (2) You may release any Borrowel, endersor, guaranter, surery, second-redation theker or any other co-signer,
 - (3) You may release, substitute or impair any Property sensing this Note.
 - (4) You, or any inettertion persolpating in the Note, may invoke your right of sec-off.
 - th) You many enter into any sales, repurchases or participations of this bloss to any person in any amounts and I waive notice of stain sties, repurchases of participations.
 - is) I agree that any of us signing this Note so a Borrower is authorized to modify the terms of this bloke or any instrument ecountry, quantum part of relating to this Note.
 - is, the trainer of Landar. Your course of dealing, or your forbescence from, or delay in, the exercise of any of your rights, remedies, privileges or sight to freight upon my strict parformance of any provisions correlated in this Note, or any other town Document, shall not be construed as a waiver by you, untake any such waiver is in writing and is aloned by you.
- 14. MEMERIES. After 1 default, and after you give any locally required notice and opportunity to oute the default, you may at your option do any one or more of the following.
 - A. Acceleration. You may make all or any part of the amount owing by the terms of this Mote immediately due.
 - b, Courses. You may use say and all remembe you have under state of federal law or in any Last Deputation.
 - C. Insurance Benefits. You may make a claim for any and all insurance benefits or returnin that may be evellable on my default.
 - D. Paymans listed On by Behalf. Amounte advenced on any baself will be immediately that entimize by social to the balance owing trader the terms of this Now, and account interest at the highest presentativity interest sets.
 - E. Terreination. You may terrimete my right to obtain advances and may refuse to make any further extensions of steels.
 - P. Attachment. You may attach of garnish my wages or existings.
 - G. Bot-Off. You may use the right of ser-off. The Musica you may assort any amount due and payable under the terms of this Note application typic linears to reserve monthly from you.
 - hey right to receive money from you includes any deposit or state account bulence I have with you; ever meany excel to me on an item password to you or in your possession for collection or accounts; and any repulsions agreement of other nate-deposit collection, "Any amount due and payable, under the terms at the Note" matter the term and should be which you are excited to demand payable under the terms at the Note" matter the term and should be which you are excited to demand payable under the terms of this Nate at the time you set off.
 - Subject to any other written constant. If my right to receive money from you is also owned by compone who has not agreed to pay this Now, your right of extent will apply to my interest in the obligation and to any other emotives I could withdraw on my sole request or
 - Your right of ass-off does not apply to an account or other obligation where my rights area only in a representative capsulty. It also done not apply to any included Represent Associate or inher tax-determed Jethament associate.
 - You will not be liable for the dishonor of any chack when the dishonor equals because you est-off against any of my accounts. I agus to had you have been some any about statute arising an a result of your examples of your right of set-off.
 - M. Walvar. Except as otherwise requised by law, by shoosing any one of more of these remedies year do not give up year right to we say, other rainedy. You do not walve a default if you shoose not to use a nimedy. By electing not to use any namedy, you do not walve your right to later pensions the event's default and to late any termedies it the default sentimes or or our a gain.

J.S.L. NaGyare Baseds Dakson Provincenty Natio 80/4X MANA page 337 ; 00000 147022652306N

*1895 Barbara Systems, Inc., St. Cloud, MN #2655747



- Committee of the property of



- 16. COMMISSIONS. Sunderstand and surve that you for your addition) will carry commissions at fees on any insurance products, and may early such fees on other sampless that I buy through your or your addition.
- 17. WARRANTES AND REPRESENTATIONS. I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a pany.
- 18, (N\$URANCE, | agree to obtain the insurance described in the Lean Agreement.
 - A. Preparty insurance. I will insure or retain insurance operage on the Property and abide by the insurance requirements of any security
 - B. Flood instructed, fined insurance is not required at this time. It may be required in the inture should the property be included in an updated flood plain map. If required in the future, I may obtain flood insurance from enjoined warm that is researcied, acceptable to you.
 - C. Susserior Waterships, I upper to purphase any insurance coverages that are required, in the amounts you tequire, as described to this or any other documents I sign for this busy. I will have revoke you wis continuing ploof of coverage. I will buy or provide insurance from a firm Research to do business in the State where the Property is located. If I buy or provide the insurance price or any insurance price. I will buy or provide you wis to repeat the insurance from someone other than you, the firm will be represented acceptable to you. I will have the insurance company have you so form payers or any features policy. You will apply the frequency provided the provided plantage. I give this the insurance provided to not spow the applicance it will now you, I will pay the difference. I will keep the insurance parts of the expression to provide applicance in the insurance provided as spowney structured by the spreament by the agreement are paid. If I want to buy the insurance provided a separate structure by the insurance.

18. APPLECABLE LAW, This Nove is governed by the laws of South Dakols, the United Status of America, and as the extent required, by the laws of the published when the Property is located, assess to the extent such state laws or presempted by federal law.

20. JOHNT AND URDANDULL LEAVILTY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to buy it. You may out one stone, or anyone also with is obligated on the Loan, or any thirder of on tagester, we callect the Loan. Surending the Loan or new obligations under the Loan, will not effect my duty under the Loan and I will sell be obligated to pay the Loan. This field shall likely in the bandit of and be articrosable by you and your supplements and addition and be briding upon and obligations are and my personal representatives, excessors, heirs and sadigns.

- 21. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by one squament, No entendment or modification of this Note to affective unless made in writing and symmetric by you and me. This Note and the other Lean Documents are the complete and final expression of the agreement. If any provision of this Note is unemforceable, then the unemforceable provision will be amended and the remaining provisions will still be enforceable.
- 22. INTERPRETATION. Wherever used, the singular includes the physics and the plural includes the singular. The section headings are for convenience and are not to be used to interpret or define the terms of this Note.
- 23. NOTICE, PRIANCIAL REPORTS AND ADDITIONAL DOQUERING. Unlose observine required by lew, any notice will be given by delivering in or making it by first class such to the appropriate party's address listed in the DATE AND PARTIES section, or to any other sediment designated in writing. Notices to one Bottower will be designed to be notice to all Bottowers. I will britten you to writing of any change in my same, address or other application between sites of unit provide you any financial statement or information you required. All financial statements and information i give you will be correct and complete. I agree to algo, deliver, and fits any established documents at aeristications that you may consider measurely to perfect, cominse, and prepares my obligations under this Lean and co confirm your ion status on any Property.
- 34. CREDIT INFORMATION. I agree to supply you with windows information you remonably request. You will make requests for this intermetion without undustroquency, and will give me researable time in which to supply the inform
- 26. EMPORE AND OMISSIONS. I ages, if requested by you, to tuly acoperate in the correction, if necessary, in the removable discrition of you of the and of the closing deciments so that all documents accurately describe the last between you and res. I agree to execute as easts included by why of illustration and not limitation, eating expresses, legel fees and merketing losses for falling to researchly comply with your
- 26. SIGNATURES. By signing under seal, I speep to the terms centained in this Note. I also adinowindge receipt of a copy of the Mote.

BOAROWER!

e 4,

South Odinia franciscov Nata Edvaystraling00927100004147023042306N

Princip Contains Systems, Inc., St. Cloud, Mill (Dellister)

Exhibit C

STAMATAKIS & THALJI, P.L.

CONSUMER JUSTICE ATTORNEYS

AREAS OF PRACTICE

- Personal Injury: .
- * Wrongiol Death
- * Banksuptey
- · Real Estate
- Business Uaw
- Criminal Defense
- Probate
- FamilyLaw
- Inconigration

June 12, 2007

Certified Mail # 7006 2760 0000 4393 9222 Return Receipt Requested

Jill McGuire 1406 Blackburn Street Wheston, IL 60187

RE:

Notice of Mortgage Note Default

Loan#: 90082

Property Address: 101 Terry Avenue North, Lehigh Acres, FL 33971

Dear Mrs. McGuire:

THIS LAW FIRM MAY BE DEEMED A 'DEBT COLLECTOR' UNDER THE FAIR DEBT COLLECTION PRACTICES ACT. ANY INFORMATION OBTAINED WILL BE USED FOR THE PURPOSE OF COLLECTING A DEBT.

If you have previously been discharged from a Chapter 7 Bankruptcy in conjunction with this property and did not sign a reaffirmation agreement, this letter is not an attempt to collect a debt from you personally. This letter serves as a notice of the upcoming foreclosure as required by either your security instrument, Florida Law, and/or the Federal Fair Debt Collection Practices Act.

Please be advised that the undersigned represents BankPirst in regards to the Note and Mortgage executed dated May 26, 2006. According to our client's records, the above-referenced Mortgage and Mortgage Note are in default. Your payment for June 1, 2007 has not been made. Unless the payments on your loan can be brought current by July 12, 2007, it will become necessary to accelerate your Mortgage Note and pursue the remedies provided for in your Mortgage. Below is a list of the funds required to bring your loan current and the dates they were/are due:

 Principal Balance
 \$125,163.5

 Interest
 \$1,401.38

 Late Fees (5% of balance)
 \$6,328.75

 Certified Mail
 \$5.21

 Attorney's Fees
 \$150.00

TOTAL AMOUNT DUE ON JULY 12, 2007

\$133,048.91

EXHIBIT C

The monies must be in the form of a cashier's check, money order or certified funds made payable to the Trust Account of Stamatakis & Thalji, P.L., and submitted to the firm's street address listed above. Any amount less than the total amount due may be returned to you, the loan accelerated, and foreclosure proceedings initiated. If the above mentioned breach is not cured on or before the date specified in this notice, BankFirst will declare all sums secured by the above-referenced Mortgage and Mortgage Note due and payable as of said date and will exercise any remedies permitted by applicable law. In accordance with the Housing and Community Development Act of 1987, home ownership counseling is available from non-profit organizations. If you are in need of financial advice, you may contact a HUD-approved housing counseling agency. These agencies provide experienced home ownership counseling at no charge to you. For the agency in your area, call (800) 569-4287.

IMPORTANT IF TENANTS OCCUPY THE PROPERTY

If applicable, pursuant to applicable assignment of rents provision in the note and mortgage, and Florida Statutes Section 697.07, BankFirst is entitled to an assignment of rents upon the above mentioned default. By law, BankFirst hereby demands all rents due and/or in your possession upon receipt of this letter in addition to all rental income collected thereafter.

Sincembe

Scott D. Stap atakis, Attorney at Law

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT, (THE ACT) 15 U.S.C. SECTION 1601 AS AMENDED

- 1. The amount of the debt due under the Mortgage and Mortgage Note on July 12, 2007 is \$133,048.91, and set forth in more detail on page number one (1).
- 2. BankFirst is the creditor to whom the debt is owed. The undersigned law firm represents the interests of BankFirst.
- 3. The debt described in this letter will be assumed to be valid by the undersigned law firm unless you, within thirty days after the receipt of this notice, dispute in writing the validity of the debt or some portion thereof.
- 4. If the yeu notify the undersigned law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the undersigned law firm will obtain a verification of the debt and a copy of the verification will be mailed to you by the undersigned law firm.
- 5. If you notify the undersigned law firm in writing within thirty days after the receipt of this notice, the undersigned law firm will provide you with the name and address of the original creditor, if different from the current creditor.
- 6. The Fair Debt Collection Practices Act does not require me, the 'debt collector', to wait until the end of the thirty (30) day period before suing you, the consumer, to collect this debt. If however, you request proof of the debt, or the name and address of the original creditor, within the thirty (30) day period, which begins with your receipt of this letter, the law requires me to suspend my efforts, through litigation or otherwise, to collect the debt until I mail the requested information to you.
- 7. Written requests should be addressed to Scott D. Stamatakis, Stamatakis & Thalji, P.L., P.O. Box 341499, Tampa, Florida 33694.

Stamatakis & Thalji, P.L. Attorneys for BankFirst

Scott D. Stamatakis, Attorney at Law

Exhibit D



6. finan Mert, & Johnson, 1975 Altorneys Ar Law Eugethy Cosp. won Center 27 - Prairie Center Drive, Solie 206, Edna Pravia, 30N, 3034 Temphones 862 (2005) 500 Encentales 952,995,9677, Website, consciliupae com

March 7, 2008

NOTICE REQUIRED BY THE FAIR DEBT COLLECTIONS PRACTICES ACT 15 U.S.C. SECTION 1692, ET. SEQ.

VIA FIRST CLASS AND CERTIFIED MAIL RETURN RECEIPT REQUESTED

Jill L. McGuire 1406 Blackburn Street Wheaton, Illinois 60187

Rc:

NOTICE OF DEFAULT

Note and Mortgage Dated May 26, 2006

Dear Ms. McGuire:

On May 26, 2006, Jill McGuire ("Borrower") executed and delivered to BankFirst a promissory note in the original principal amount of \$299,700.00 ("Note"). On May 26, 2006, the Borrower also executed a mortgage, which secures the Note ("Mortgage").

The information provided to you in this letter is provided in accordance with the Fair Debt Collections Practices Act. This letter supersedes all prior correspondence and billing statements delivered to you.

- 1. You are hereby notified that under the terms of the Note, you were required to pay the entire unpaid principal and any accrued but unpaid interest owed under the Note in full on June 1, 2007. You have failed to pay the entire indebtedness owed under the Note by June 1, 2007, and therefore, you are in default under the terms of the Note and Mortgage. As of March 4, 2008, a total amount of \$136,323.40 is currently past-due under the Note, comprised of principal in the amount of \$125,163.57, and past-due interest in the amount of \$11,159.83. This amount does not include attorneys' fees and costs, which BankFirst is entitled to.
- 2. You are hereby notified that under the terms of the Note, BankFirst is entitled to an increased interest rate following maturity of the Note, and BankFirst is entitled to a five percent late charge if any payment is more than fifteen days late.

EXHIBIT D

Jill L. McGuire March 7, 2008 Page 2

- 3. These defaults allow BankFirst to immediately commence an action for a judgment for the full amount due and owing, commence actions to foreclose your Mortgage, or take any other actions allowed by law and recover attorneys' fees. You are further advised that you have the right to bring a court action to assert the nonexistence of a default or any other defense you may have.
- 4. The creditor to whom debt is owed is BankFirst, a state chartered bank.

This letter serves as written notification of the above-enumerated defaults ("Defaults"). This notice is as of this date alone. This list of Defaults is not exclusive, and BankFirst expressly reserves its right to supplement and amend this list of Defaults. In addition, BankFirst expressly reserves its right to declare additional defaults as they occur and reserves its right to declare any additional defaults that may exist as of the date of this notice. Please be further advised that this notice is not, and is not intended to be, a waiver or amendment of any of BankFirst's rights with respect to any Defaults including the right to amend this notice or notify you of additional defaults.

You are required to pay to BankFirst all past-due amounts under the Note. Additionally, you are responsible for all of BankFirst's costs and fees associated with this Default, including, but not limited to, attorneys' fees. Please call me within 30 days of the date of this letter to arrange for the exact payoff as of the day you intend to make payment and to make arrangements for such payment. Payment should be made by delivering a Cashier's Check to Marshall BankFirst Corporation, 225 South Sixth Street, Suite 2900, Minneapolis, MN 55402, Attn: Matthew Sawicki.

If BankFirst does not receive full payment within 30 days of the date of this letter, BankFirst will exercise the legal remedies available to it under the Note and Mortgage, including, but not limited to: (1) seeking judgment against you for the full principal amount due under the Note, plus interest; and (2) in its discretion, foreclose the Mortgage that secures repayment of the Note. Additionally, BankFirst will seek to recover its costs, fees, and attorneys' fees associated with enforcing its rights and remedies under the Note and Mortgage.

UNLESS YOU NOTIFY US WITHIN 30 DAYS AFTER RECEIPT OF THIS LETTER THAT THE VALIDITY OF THIS DEBT, OR ANY PORTION OF IT, IS DISPUTED, WE WILL ASSUME THAT THE DEBT IS VALID. IF YOU DO NOTIFY US IN WRITING OF A DISPUTE, WE WILL OBTAIN VERIFICATION OF THE DEBT AND MAIL IT TO YOU. ALSO, UPON YOUR WRITTEN REQUEST WITHIN 30 DAYS OF THE DAY YOU RECEIVE THIS LETTER, WE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR IF DIFFERENT FROM THE CURRENT CREDITOR.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Jill L. McGuire March 7, 2008 Page 3

NOTWITHSTANDING THE CURE PERIOD, LENDER RESERVES THE RIGHT TO SEEK EMERGENCY RELIEF FROM THE COURT AT ANY TIME, INCLUDING THE RIGHT TO PRESERVE AND PROTECT ITS COLLATERAL.

ALTHOUGH THE LENDER MAY HAVE ACCEPTED LATE PAYMENTS IN THE PAST OR MAY HAVE WAIVED STRICT COMPLIANCE WITH THE LOAN DOCUMENTS, THE LENDER IS HEREBY REQUIRING STRICT COMPLIANCE BY THE BORROWERS OF THE TERMS OF THIS LETTER AND OF THE LOAN DOCUMENTS IN ORDER TO AVERT FURTHER ACTION BY THE LENDER WITH REGARD TO THE ABOVE-REFERENCED COLLATERAL, TOGETHER WITH SUCH OTHER LEGAL ACTION THE LENDER MAY DEEM APPROPRIATE, INCLUDING A LEGAL ACTION AGAINST THE BORROWERS FOR ANY AMOUNTS DUE AND PAYABLE BY THE BORROWERS UNDER THE ABOVE-REFERENCED NOTES, WHICH AMOUNTS MAY INCLUDE BUT NOT BE LIMITED TO THE LENDER'S ATTORNEYS' FEES, COSTS AND OTHER CHARGES AND FEES ALLOWED BY THE LOAN DOCUMENTS AND THE LAW.

Sincerely,

JAS:mar